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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,103	09/11/2000	Eric M. Weaver	P03592US2	4512

7590

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EXAMINER

EWOLDT, GERALD R

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/659,103

Applicant(s)  
Weaver et al.

Examiner  
G.R. Ewoldt

Art Unit  
1644



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 22, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 1.5 6) ☐ Other:

#### DETAILED ACTION

1. Applicant's election of Group II in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1-8 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected invention.

Claims 9-21 are being acted upon.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 9-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically:

A) Claim 9 is incomplete as it is dependent on non-elected Claim 1. Note: Applicant is advised that Claim 1 recites "least" misspelled "lest".

B) Claim 9 encompasses a method of improving weight gain, etc., in all animals (line 2), however, in line 3 the recitation of "an animal post-weaning," indicates that the animal must be a mammal (as only mammals are weaned), thus the claim is indefinite. Note: Applicant is advised that the specification can not support amending "animal" to "mammal." The specification can however, support amending "animal" to "cow and pig".

C) Claim 11 is indefinite in the recitation of "chicken" as it is unclear just when a chicken would be considered "post-weaning" as chickens are not weaned.

D) Claim 13 is indefinite in the recitation of "underweight" as it is unclear just what pigs would, and would not, be encompassed by the term. Thus, the metes and bounds of the claim are not defined.

E) Claim 15 recites "about 0.1-0.75% by weight," whereas the specification (page 16, 2nd paragraph) discloses "approximately 0.1-0.75% by weight." The terms "about" and "approximately" have different definitions, about being considerably broader in scope. Thus, the term has no antecedent basis in the specification.

Applicant is advised that the rejection may be obviated by either amending the specification to include the language of the claim or amending the claim to recite the language of the specification.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-18 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 4,816,252 (IDS) in view of Japan Patent No. 61-132143 (IDS) and U. S. Patent No. 4,623,541 (IDS).

The '252 patent teaches a method comprising the administration of IgG supplements in the water source of an animal, including a cow, "post-weaning," for the transfer of passive immunity to said animals (see particularly column 4, lines 64-67 and column 24, lines 55-60).

The reference differs from the claimed invention in that it does not teach the specific use of animal plasma-derived globulins to promote weight gain and growth nor administration of said globulins in specific concentrations, i.e., at least 15% IgG, in a dispersed concentration of about 0.375 to about 3.0% by weight, and a concentration of about 0.1-0.75% IgG by weight.

Japan Patent No. 61-132143 teaches the use immunoglobulins as feed supplements to promote weight gain in pigs.

The '541 patent teaches the use of animal plasma-derived immunoglobulins in a liquid feed source that provides for both immunological protection and increased weight gain in piglets (see particularly Example 1 and Biological (Animal) Test) in concentrations encompassing the claimed limitations of "about 0.375 to about 3% globulin concentrate", "about 0.1-0.75% concentration of IgG", and "a dose of 0.5 immunoglobulin/hd/day or more", and including additives and nutrients. The reference further teaches the use of animal plasma (blood) for the convenient production of high purity immunoglobulins (see particularly column 3 lines 6-12).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to perform method comprising administering immunoglobulins in the water source of an animal, including a cow, "post-weaning" as taught by the '252 patent, or to a piglet to promote weight gain, as taught by Japan Patent No. 61-132143, it would have been obvious to use a globulin concentrate as a feed supplement for piglets and to optimize the concentration of immunoglobulins for maximum weight gain and growth as well as decreased morbidity and mortality. One of ordinary skill in the art at the time the invention was made would have been motivated to encompass the claimed dosages and the claimed additives in order to achieve the referenced passive immunity and nourishment, as taught by the '541 patent, as the optimization of various concentrations and dosages would be required by animals of different ages and weights with different nutritional and immunological needs and would have been well within the purview of one of skill in the art at the time of the invention. Further, one of ordinary skill in the art at the time the invention was made would have been motivated to substitute immunoglobulins derived from animal plasma because animal plasma (blood) provides a convenient source for the production of high purity immunoglobulins, as taught by the '541 patent.

7. No claim is allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Serial No. 09/659,103  
Art Unit 1644

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Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.



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Technology Center 1600  
May 16, 2002